

TERMS AND CONDITIONS OF SALE

1. **Acceptance and Complete Agreement.** All orders (“Orders”) placed for products (the “Products”) furnished by Marshall Excelsior Co. (“Seller”) to the purchaser thereof (“Buyer”) are subject to the terms and conditions set forth herein and any Schedules attached hereto (collectively, these “Terms”), the warranty incorporated by reference in Section 14 of these Terms (the “Warranty”), the sales quotation for the Products given by Seller (the “Offer”), the written order acknowledgment from Seller accepting Buyer’s written Order for the Products (the “Order Acknowledgment”) and any confidentiality and/or nondisclosure agreement executed between Seller and Buyer (the “NDA”). These Terms, the Warranty, the Offer, the Order Acknowledgment and the NDA are hereafter collectively referred to as the “Contract,” whether or not specifically referred to. If any provision in the Order Acknowledgment is inconsistent with these Terms, the provision of the Order Acknowledgment shall govern. No additional or different terms or conditions or any modifications, changes or amendments to the Contract shall be binding upon Seller unless specifically agreed to in writing by an authorized representative of Seller. Seller hereby objects to, and rejects, any additional or different terms already or hereafter proposed by Buyer, but not expressly set forth in the Contract, whether contained in any documentation or communication from Buyer or otherwise, including, without limitation, any terms set forth in any purchase order, acknowledgement, statement of terms and conditions or any other such document or communication. Seller’s failure to further object to any of the provisions contained in any documentation of Buyer’s or any communication of any kind from Buyer shall not be deemed a waiver of the terms of the Contract or as an acceptance by Seller of any deviation from the terms of the Contract. SELLER’S ACCEPTANCE OF ANY OR ALL OF BUYER’S ORDERS FOR PRODUCTS IS CONDITIONAL UPON BUYER’S ASSENT TO THE TERMS OF THE CONTRACT REGARDLESS OF ANY TERMS CONTAINED IN ANY OF BUYER’S COMMUNICATIONS OR DOCUMENTS. Sales literature, price lists, illustrations, drawings, samples, photographs or descriptions and other documents issued by Seller in relation to the Products are subject to alteration without notice and are intended as a guide only and shall not be binding on Seller. The Contract constitutes the entire agreement between Seller and Buyer with respect to the topics in the Contract, superseding all prior oral or written communications, representations, agreements and negotiations.

2. **Delivery Times.** All quoted delivery dates for Products are estimates only and Seller shall not be liable for any failure to deliver the Products at the specified time or on the specified date unless agreed in writing between the parties. Seller reserves the right to make delivery in installments and all such installments, when separately invoiced, shall be paid for when due per Seller’s invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries. Seller will attempt to comply with reasonable requests by Buyer for changes in delivery dates, but Seller shall be under no obligation to do so. Additional charges may apply for changes

in delivery dates or times, at Seller’s discretion.

3. **Shipping and Delivery.**

3.1. Unless otherwise specified in the Order Acknowledgment or agreed in writing by Seller, all Products shall be delivered Free Carrier (FCA, Incoterms 2020) from Seller’s facility or another location designated by Seller.

3.2. Products will be packaged in accordance with Seller’s standard packaging specifications applicable at the time of shipment, unless otherwise provided in the Order Acknowledgment. Upon Buyer’s request, Seller may agree to provide special packaging, marking or forms, in each case, subject to additional charges and Seller’s prior written consent.

3.3. Buyer shall be responsible for all shipping charges, including, but not limited to, shipping, transportation, duties and insurance costs, unless otherwise specified in the Order Acknowledgment or agreed in writing by Seller. The Products will be shipped under a straight bill of lading, naming Buyer as consignee. If requested by Buyer, forthwith after the Products have been delivered to a shipper for transportation to Buyer, Seller shall transmit the bill of lading to Buyer at Buyer’s address as stated in Buyer’s Order. Unless otherwise agreed by Buyer and Seller, any prepayment by Seller of certain shipping, handling, transportation, duties or other related charges that are the responsibility of Buyer pursuant to the Incoterms set forth in Section 3.1 will be added to Buyer’s invoice.

4. **Risk and Title.** Title to all Products shall transfer to Buyer upon delivery of such Products to a shipper or freight carrier, as applicable, for transportation to Buyer in accordance with the Incoterms set forth in Section 3.1 (the “Delivery”) and upon such Delivery, Buyer shall bear all risk of loss. Subsequent to Delivery, Seller shall not be responsible or liable for the security, safeguarding or insurance of the Products so transferred.

5. **Storage.** Any of the Products whose manufacture, installation or shipment is delayed (a) by the acts or omissions of Buyer or (b) at Buyer’s request, may be placed in storage by Seller (at Seller’s sole option) at Buyer’s risk and at Buyer’s cost and expense (including insurance). Storage fees will be assessed from the originally-scheduled shipment date (or the date the Products were ready to ship if a shipment date had not been scheduled) until the Delivery. The storage fee rate for finished Products that are prevented from shipping will be provided to Buyer. The storage fee will be added along with the actual freight and handling and applicable taxes to the final invoice for the Products. All charges for storage are per Product and may vary based on the type of Product stored.

6. **Orders and Price.**

6.1. All prices and delivery quotations made by Seller in the Offer are conditioned upon these Terms. No Order shall be binding upon Seller until received in writing and accepted by an authorized representative of Seller through Seller’s issuance of a written Order Acknowledgment. Any amendment to an Order made by Buyer shall be binding on Seller only if confirmed in writing by Seller and additional costs, if any, for such amendment shall be borne by Buyer. Any Contract resulting from acceptance of any Order placed with Seller may only be modified or rescinded by a written document signed by

the duly authorized representative of both parties.

6.2. All information, prices and specifications shown in Seller's advertisements, catalogues, brochures, product and price lists, website or otherwise are indicative, subject to change without notice and shall under no circumstances bind Seller.

6.3. All prices and special terms quoted by Seller will expire thirty (30) calendar days from the date such pricing or terms were originally proposed by Seller in the Offer unless otherwise specified or extended in writing by Seller. The price of the Products will be Seller's quoted price in the Offer or, where no price has been quoted (or a quoted price is no longer valid), the price current at the date of the Order Acknowledgment by Seller; provided that, in the event of a price change following the Order Acknowledgment, products on hand at the time of a price increase will be invoiced at the acknowledged price, while products entered or scheduled for shipment after the effective date of the price change will be invoiced at the increased price.

6.4. Seller reserves the right, by giving notice to Buyer at any time before Delivery to increase the price of Products to reflect any factor beyond the control of Seller, such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labor, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Products which is requested by Buyer or any delay caused by any instructions of Buyer or failure of Buyer to give Seller adequate information or instructions. Seller also reserves the right to make changes to quoted prices for pricing errors, clerical errors, or other errors or omissions.

6.5. Prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions which are not part of the original price quotation in the Offer. If the prices are based on the purchase of a particular quantity of Products and Buyer fails to purchase that quantity which would justify the pricing granted, Buyer will, at Seller's option, pay Seller the difference between the stated prices and Seller's standard prices for such Products in the quantity actually purchased by Buyer.

7. **Payment.**

7.1. Products are invoiced upon Delivery, shipment or at the time Seller puts the Products at Buyer's disposal, whichever occurs earlier. If Delivery of any Product is delayed by Buyer, the date of notice of readiness for Delivery shall be deemed to be the date of Delivery for invoice purposes. Unless otherwise provided in the applicable Order Acknowledgment, terms of payment are net thirty (30) calendar days from the date of Seller's invoice and shall be made in U.S. dollars, provided that Seller reserves the right to modify its credit terms from time to time. All Orders are subject to Seller's credit approval process. If Buyer is not offered credit or if its creditworthiness changes, in each case, as determined by Seller in its sole discretion, then Seller may demand advance payment for Products or other means of financial security, including a letter of credit.

7.2. Any late payments are subject to a finance charge of the lesser of 1.5% per month (18% per annum) or the maximum amount allowed by law, computed on all unpaid amounts and calculated on a day to day basis until the actual date of full payment. All payments due to Seller shall be made in full without any set-off or deduction to the amounts shown on the

relevant invoice. If Seller receives partial payment in an amount less than the full amount of any invoice, such receipt shall neither constitute a waiver of Seller's right to collect the balance nor an accord and satisfaction, notwithstanding Seller's endorsement of a check or other instrument. Buyer shall have no right to withhold any amount due to Seller under the Contract because of a claim Buyer may have against Seller. If Seller engages counsel in respect of any late payment or default, Buyer will pay, in addition to the balance then due and owing, all collection costs, court costs, administrative costs, investigation costs, reasonable attorneys' fees and all other incidental costs, charges or expenses incurred in the collection of past due amounts or otherwise resulting or arising from any breach by Buyer of the Contract. In addition to all other remedies available under the Contract or at law (which Seller does not waive by the exercise of any rights under the Contract), Seller shall be entitled to withdraw credit or suspend or cancel the delivery of any Products, under this Contract or any other agreement between the parties, if Buyer fails to pay any amount when due hereunder and such failure continues for five (5) calendar days following written notice to Buyer thereof.

8. **Taxes and Other Charges.** Unless otherwise specified or required by law, all prices will be quoted and billed exclusive of customs, duties or taxes and Buyer shall be responsible for all such applicable duties and taxes (exclusive of taxes on Seller's income). If exemption from such taxes is claimed, Buyer must provide a certificate of exemption at the time its Order is submitted to Seller and Buyer will indemnify Seller for any unpaid taxes, as well as any penalties and interest, in the event such exemption is not applicable.

9. **Loss or Damage in Transit; Returns.**

9.1. Seller's responsibility for damaged Products ceases upon Delivery and all claims for loss or damage occurring after Delivery must be filed by Buyer with the carrier.

9.2. In the event of (a) shortage, (b) excess deliveries, (c) wrong product, (d) visible damage, (e) concealed damage or (f) loss occurring prior to acceptance by the carrier, a claim must be made in writing by Buyer against Seller. All claims against the carrier or Seller under this Section 9 must be made within five (5) business days after the Delivery of the Products; provided, however, that Buyer may make a claim within four (4) weeks after Delivery of the Products for international shipments. Buyer's failure to timely make any such claim shall constitute unqualified acceptance and a waiver of all such claims by Buyer. Claims against Seller are subject to Buyer's compliance with Seller's return merchandise authorization policy, which will be provided to Buyer upon request. Seller may, at Seller's option, require Buyer to (a) provide photographs or other documentation of such claim and (b) make the Products (including packaging, wrappings and/or carton) subject to the claim available for inspection by Seller or its authorized representative in order to substantiate the grounds for rejection of the Products. Unless otherwise agreed in writing by Seller, all rejected Products must be returned to Seller, at Buyer's expense, prior to replacement by Seller. All returns shall be at Buyer's risk and expense and must be sent to Seller under DDP (Incoterms 2020) at the place of destination indicated by Seller.

9.3. Seller may, in its sole discretion, accept the return of Products. Returned Products must be unused, in their original

packaging, and in good working condition to be eligible for return, unless otherwise provided in writing by Seller. Prior to returning any Products, Buyer shall issue a written request to Seller for a return merchandise authorization number (“RMA Number”) setting forth the reason for such request in reasonable detail. Any return of Products to Seller will be made ONLY upon Seller’s assignment of a RMA Number to Buyer. Such RMA Number must be displayed prominently on the outside of the box that contains the returned Products. Any Products returned to Seller without a RMA Number will be refused and returned to Buyer at Buyer’s expense. Seller may reimburse Buyer for any returned Products either by providing a replacement for the returned Products or as Seller store credit, at Seller’s sole option.

10. **Substitutions; Modifications.**

10.1. Seller shall have the right to deliver substitute products for the Products ordered by Buyer, provided that such substituted products do not materially differ from the ordered Products in terms of overall form, fit and performance, as determined in Seller’s sole and complete discretion. Seller reserves the right at any time to make changes to Products or in the design or specifications of the Products, without liability or obligation to implement such change to any Products previously manufactured and further reserves the right to discontinue any Product at any time.

10.2. Drawings, specifications, product finishes and color shades in Seller’s literature and advertisements are approximate only and do not constitute a trade description.

11. **Cancellation and Termination by Buyer; Rescheduling.** Buyer’s Order, after acceptance by Seller, shall not be subject to cancellation, change, or reduction in amount, nor to any suspension by Buyer of deliveries, without Seller’s prior written consent. If Seller consents to a cancellation, change, or reduction of an Order, Seller may invoice Buyer for cancellation fees which may take into account (a) all expenses already incurred, including, but not limited to, expended materials, labor, production costs and work in progress; (b) outstanding commitments that cannot be cancelled, and (c) all incidental costs and expenses, including, but not limited, to storage and handling fees. Buyer will pay such cancellation fees within thirty (30) calendar days of the date of Seller’s invoice. Any requests by Buyer to delay the delivery of any Order beyond the originally scheduled delivery date shall be made in writing and are subject to the prior written consent of Seller, in its sole discretion. Seller reserves the right to assess Buyer a charge sufficient to cover all costs incurred by Seller due to any approved delay or Buyer’s failure to take delivery on the scheduled delivery date (in addition to any storage charges described above). Any charge assessed to Buyer due to its failure to take delivery of an Order shall be in addition to, and without prejudice to, other remedies Seller may have at law or equity.

12. **Cancellation and Termination by Seller; Rescheduling.** Seller reserves the right to cancel any Orders placed by Buyer or to refuse or delay shipment thereof, with no liability to Seller, if Buyer (a) fails to make any payment as provided in the Contract or under the terms of payment set forth in any invoice or otherwise agreed to by Seller and Buyer, (b) fails to meet reasonable credit or financial requirements established by Seller, including any limitations on allowable

credit, (c) otherwise fails to comply with the Contract, (d) becomes debarred, suspended or identified as a denied party by any applicable government agency, (e) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors or (f) violates or is reasonably believed to have violated, applicable law, including anti-bribery, anti-corruption or anti-money laundering or privacy laws.

13. **Tooling.** Unless otherwise specified in an agreement signed by Seller and Buyer, all tooling, fixtures, equipment, tools, software and designs produced, acquired or used by Seller for the purposes of filling Buyer’s Order remain the property of Seller.

14. **Warranty.**

14.1. **General.** The warranty applicable to the Products is located at: https://www.marshallexcelsior.com/sites/default/files/files/MEC%20Warranty_2019.pdf.

14.2. **Additional Terms Pertaining to Warranties.** Deviations from published specifications which do not materially affect performance of the Products covered hereby shall not be deemed to constitute a breach of the applicable warranty. The applicable warranty is subject to the disclaimers and exclusions set forth therein.

15. **Intellectual Property Rights.** All intellectual property rights in or relating to, the Products, including, but not limited to, all technical data, processes, designs, drawings, engineering data, U.S. and foreign patents, patent applications, patent rights, trademarks and service marks (including common law rights, applications and registrations thereof), copyrightable and un-copyrightable works (including those in computer programs, drawings, designs, documentation and specifications), copyright registrations, trade secrets, proprietary rights in information (including in data, inventions, discoveries, know-how, formulas, processes, technical information and business information), license rights under the intellectual property rights of third parties and all other intellectual property rights whether or not subject to statutory registration or protection (collectively, “Intellectual Property Rights”), are owned by or licensed to Seller. The sale of any Products to Buyer in no way conveys to Buyer, either expressly or by implication, any intellectual property ownership or license whatsoever, except as may be expressly granted by Seller in the materials which accompany the Products upon delivery. Seller expressly reserves its ownership rights in and to its Products and asserts that additional restrictions may apply to the use of the Products, as set forth in the applicable documentation and other materials which accompany the Products. Any unauthorized use of Seller’s Intellectual Property Rights, including, but not limited to its trademarks, is expressly prohibited.

15.1. **Infringement Claims – Indemnification by Seller.** Seller will defend, indemnify and hold harmless Buyer and its officers, directors, employees, agents and equity holders from any liabilities, losses, costs and expenses (including, without limitation, reasonable out of pocket expenses for attorneys’ fees and costs of litigation) (collectively “Losses”) arising out of a claim made against Buyer by an unaffiliated third party (but excluding claims described in Section 15.2) for alleged

Commented [TAC1]: Note to MEC: Inserted link to the older 5-year warranty. Warranty and link to be updated once MEC completes its internal working sessions.

infringement of any U.S. patent, trademark or copyright existing as of the date of issuance of the related Order Acknowledgement and relating to Buyer's lawful use of the Products purchased under the Contract in Buyer's business. Seller's obligations hereunder are contingent upon Buyer having made all payments to Seller then due at the time the claim arises and not otherwise being in breach of any provision of the Contract as well as Buyer's compliance with the indemnification procedures outlined below. Seller may also, at any time, at its option: (a) procure for Buyer the right to continue to use the Products in question, free of any liability for such infringement; or (b) direct Buyer to cease use of and not market or sell such Products and (i) modify the Products in question so that they become non-infringing; (ii) substitute the Products in question with functionally equivalent non-infringing Products; or (iii) in accordance with Section 9.3 above, accept the return of the Products against payment of the Products' then-depreciated value, computed on a three (3) year straight-line depreciation schedule commencing as of the date of delivery. The obligations set forth in this Section 15.1 shall be Buyer's sole and exclusive remedy and Seller's entire liability for any infringement of third party intellectual property rights as described in this Section 15.1.

15.2. **Infringement Claims – Indemnification by Buyer.** Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents and equity holders from and against any Losses arising out of a claim made against Seller or its suppliers by a third party to the effect that any Products manufactured for or sold to Buyer infringe upon any patent, trademark, copyright or other intellectual property right, if such Products were manufactured pursuant to Buyer's designs, specifications, processes and/or formulas or include.

16. **Other Indemnification Claims.**

16.1. **By Buyer.** Buyer shall defend, indemnify and hold harmless Seller and its officers, directors, employees, agents and equity holders from and against any and all Losses arising out of the use, operation or possession of the Products by Buyer or its affiliates, directors, employees, agents or representatives, the negligent or willful act or negligent or willful omission of Buyer or its affiliates, officers, directors, employees, agents or representatives or the alteration or modification of the Products or the use or combination of the Products with other products, devices or services by Buyer or its affiliates, directors, employees, agents or representatives.

16.2. **By Seller.** Seller agrees to defend, indemnify and hold harmless Buyer and its officers, directors, employees, agents and equity holders from and against any and all Losses arising out of the negligent or willful act or negligent or willful omission of Seller or its affiliates, officers, directors, employees, agents or representatives.

17. **Indemnification Procedures.** Promptly after receipt of any written claim or notice of any action giving rise to a claim for indemnification, (a) the indemnified party shall notify the other party and provide copies of the claim and any documents relating to the same in its possession and (b) the indemnifying party shall have control of the defense of any such claim and all negotiations for settlement or compromise provided, however, that the indemnified party shall have the right to approve defense counsel selected by the indemnifying party, such consent not to be unreasonably withheld or delayed.

In the event both the indemnified party and the indemnifying party are named in the claim and circumstances exist or may arise which would make the indemnifying party and the indemnified party adverse to each other or create a conflict of interest for the indemnifying party defending the indemnified party, the indemnified party shall be permitted to participate in the defense of the claim with counsel of its own choosing at the reasonable cost and expense of the indemnifying party and (c) at the indemnifying party's reasonable request and expense, the indemnified party shall provide it with reasonable assistance for the defense of the claim. The indemnified party shall be entitled to employ counsel at its own expense to monitor the handling of the claim and neither party shall settle a claim that imposes on or restricts the operations of the other party or requires the other party to pay monies or make admissions without the written consent of such other party, which consent shall not be unreasonably withheld or delayed. If the indemnifying party fails to assume the defense of any claim within the prescribed period of time, then the indemnified party may assume the defense of such claim at the reasonable cost and expense of the indemnifying party.

18. **Confidentiality; Data Security and Data Protection.**

18.1. All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media and whether or not marked, designated or otherwise identified as "confidential" in connection with the Contract ("**Confidential Information**") is confidential, solely for the use of performing this Contract and may not be disclosed or copied unless authorized in advance by Seller in writing. Buyer shall safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain (other than due to an improper disclosure by Buyer); (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party. The parties agree that the provisions set forth in the NDA (if executed by the parties) shall supplement and be in addition to the obligations of this Section. In the event of any conflict between this Contract and the NDA, the parties agree that the NDA shall control with respect to the obligations of confidentiality of information between the parties and this Contract shall control with respect to the sale of any Products.

18.2. Buyer represents that it has developed and implemented and covenants that it will maintain effective information security policies and procedures that include administrative, technical and physical safeguards designed to (a) ensure the confidentiality, security, integrity and availability of Seller's Confidential Information provided hereunder; (b) protect against anticipated threats or hazards to the confidentiality, security, integrity and availability of such

information; (c) protect against unauthorized access or use of such information and (d) ensure the proper disposal of such information. Buyer shall promptly notify Seller of any breach of confidentiality by Buyer or any of its agents, disclosure of Seller's Confidential Information by Buyer or any of its agents or a breach of Buyer's information security policies or procedures. Notice shall be provided to Seller no later than twenty-four (24) hours upon Buyer's discovery of such breach of confidentiality.

18.3. Buyer shall comply with the data protection and privacy legislation in all relevant countries and shall ensure that its employees, agents and contractors observe the provisions of that legislation.

19. **Security Interest.** Buyer hereby grants to Seller and its successors and assigns, a lien on and purchase money security interest in and to all of the right, title and interest of Buyer in, to and under the Products sold hereunder, wherever located and whether now existing or hereafter arising or acquired from time to time and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing, to secure payment of all obligations of Buyer under the Contract, including, but not limited to, all costs and expenses set forth in Section 7 hereof and Buyer authorizes Seller to take all actions necessary to perfect and/or enforce such security interests, including, but not limited to, the filing of any financing statement in accordance with the Uniform Commercial Code or other applicable law. Default in payment of such price or any part of the obligations when due shall permit Seller, in its sole discretion, to declare all obligations of Buyer immediately due and payable and in such event, Seller shall have all the rights and remedies of a secured party under applicable law. In connection with the security interest granted herein, Seller is expressly authorized, at its discretion, to file one (1) or more financing statements or other notices under applicable law naming Buyer as debtor and Seller as secured party. Buyer will execute such documents requested by Seller to record and otherwise perfect this security interest.

20. **Limitation of Liability.**

20.1. **Incidental and Consequential Damages.** SELLER'S LIABILITY WITH RESPECT TO THE PRODUCTS PROVIDED HEREUNDER SHALL BE LIMITED TO THE AMOUNT RECEIVED BY SELLER FOR THE PRODUCTS GIVING RISE TO ANY CLAIM HEREUNDER. SELLER SHALL NOT BE SUBJECT TO AND BUYER EXPRESSLY DISCLAIMS AND WAIVES ANY CLAIM OR INTEREST IN OR TO ANY AND ALL INDIRECT, SPECIAL, EXEMPLARY PUNITIVE, CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER RESULTING FROM SELLER'S PERFORMANCE OR FAILURE TO PERFORM UNDER THE CONTRACT OR THE FURNISHING, PERFORMANCE OR USE OF ANY PRODUCTS SOLD PURSUANT HERETO, WHETHER DUE TO BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, PRODUCT LIABILITY, THE NEGLIGENCE OF SELLER OR OTHERWISE AND WHETHER OR NOT SUCH LOSS WAS FORESEEABLE OR WHETHER BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

20.2. **Specifically Excluded Damages.** WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER SPECIFICALLY DISCLAIMS AND BUYER WAIVES ANY LIABILITY OR CLAIM FOR PROPERTY OR PERSONAL INJURY DAMAGES, PENALTIES, DAMAGES FOR LOST PROFITS OR REVENUES, LOSS OF USE OF PRODUCTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWN TIME, SHUT DOWN OR SLOW DOWN COSTS OR FOR ANY OTHER TYPES OF ECONOMIC LOSS AND FOR CLAIMS OF BUYER'S CUSTOMERS OR ANY THIRD PARTY FOR ANY SUCH DAMAGES.

20.3. **Remedies.** THE DAMAGE LIMITATIONS PROVIDED IN THESE TERMS AND CONDITIONS AND THE REMEDIES STATED HEREIN SHALL BE EXCLUSIVE AND SHALL BE BUYER'S SOLE REMEDY (EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN). THIS LIMITATION ON LIABILITY SHALL SURVIVE FAILURE OF ANY ESSENTIAL PURPOSE.

21. **Statute of Limitations.** Except as otherwise expressly provided herein, any action that Buyer may have against Seller alleging Seller's breach of any provision of the Contract must be commenced within one (1) year following Buyer's discovery of the alleged breach or such claim shall be forever barred.

22. **Modification; Waiver.** No modifications to these terms and conditions shall be enforceable except when in writing and signed by both parties, unless otherwise expressly stated herein. Seller shall not be deemed to have waived any of its rights, powers or remedies under these terms and conditions or at law or in equity unless such waiver is in writing and is executed. No delay or omission by Seller in exercising any right, power or remedy shall operate as a waiver thereof or of any other right, power or remedy. No waiver by Seller of any default shall operate as a waiver of any other default or of the same default or another occasion.

23. **Severability.** If any provisions of the Contract shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any legal and enforceable provisions hereof which shall be construed as if such illegal and unenforceable provision or provisions had not been inserted herein, unless such illegality or unenforceability shall destroy the underlying business purpose of the Contract.

24. **Assignability.** Buyer may not assign any Contract without Seller's prior written consent. Seller may assign any Contract to an affiliate of Seller or to an acquirer of control of all or substantially all of Seller's equity or assets.

25. **Force Majeure.** Seller shall not be liable for any loss, delay or failure to perform resulting from any circumstance, direct or indirect, reasonably beyond its control including, without limitation, pandemic, fire, flood, accident, explosion, insurrection, riots, national emergencies, war, armed conflict, acts of public enemies, acts of God, mechanical breakdown, strike or other labor trouble, plant shutdown, acts or omissions of Buyer, unavailability of or interference with the usual means of transporting the Products, any law, regulation order, recommendation or request of any governmental authority having or claiming to have jurisdiction over Seller, its subcontractors and/or its suppliers, or any supplier delays or

supplier failures to deliver necessary materials or components. In addition, Seller shall be so excused in the event it is unable to acquire from its usual sources, and on terms it deems to be reasonable, any labor or material necessary for manufacturing the Products. In the event that there should be a shortage of any Product, Seller may apportion its available Product among itself, its affiliates and all of its customers in such equitable manner as it deems fair and reasonable. Upon giving prompt written notice to Buyer of any such causes of a delay or failure in its performance of any obligation under the Contract, the time of performance by Seller shall be extended, at Seller's option, to the extent of any delay resulting from any force majeure event.

26. Governing Law; Exclusive Jurisdiction and Venue.

The Contract shall be governed and construed according to the laws of the State of Delaware, without reference to principles or conflicts of laws. Any action brought by either party arising out of or relating to the Contract must be brought in a U.S. District Court or state court in New Castle County, Delaware. Buyer waives any objection to jurisdiction or venue in respect of said Courts and to any service of process issued under their authority. The U.N. Convention on Contracts for the International Sale of Goods does not apply to the Contract or these Terms.

27. Compliance with Laws. Buyer shall: (a) comply with all applicable laws, rules and regulations, including, without limitation, those regarding anti-corruption, anti-bribery, human rights and environmental health and safety; (b) maintain in effect all licenses, permissions, authorizations, certificates, consents, approvals and permits necessary to carry out Buyer's responsibilities and obligations under the Contract and these Terms and (c) handle, store, use and transfer the Products in compliance with the foregoing and any safety information provided by Seller. Buyer shall complete any documents and provide such information as Seller may reasonably request to ascertain Buyer's compliance with the foregoing. The Products, including any documentation and technical data related thereto, may be subject to certain: (a) U.S. or other applicable export laws, rules and regulations, including, without limitation, the U.S. International Traffic in Arms Regulations, Export Administration Regulations and Foreign Assets Control

Regulations ("Export Laws") and (b) anti-money laundering laws, rules and regulations, including, without limitation, the U.S. Patriot Act ("AML Laws"). Buyer shall comply with all applicable Export Laws and AML Laws. Buyer shall not export, re-export or release any Products that are subject to Export Laws, directly or indirectly, to any jurisdiction to which or person to whom, such export, re-export or release is prohibited by any applicable Export Laws. It is Buyer's responsibility to obtain any license or other approvals and Buyer will complete any documents requested by Seller prior to exporting, re-exporting or releasing any Products that are subject to Export Laws. Seller will have no obligation to make any shipment to Buyer until it has received all such information and has obtained the applicable licenses, permits, approvals or documentation for shipment, if any. Buyer shall indemnify, defend and hold Seller, including its equity holders, directors, officers, employees, affiliates, successors and permitted assigns, harmless from and against any breach of this Section by Buyer or any of its equity holders, directors, officers, employees, affiliates, successors, permitted assigns, customers, agents, distributors, resellers or vendors.

28. Relationship of Parties. Nothing contained in these terms and conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these terms and conditions shall be deemed to construe either of the parties as the agent or distributor of the other party.

29. No Third-Party Beneficiaries. Except with respect to the indemnification obligations in favor of each party's officers, directors, employees, agents and equity holders in Sections 15 and 16, the Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

30. Survival. Sections 6, 9, 15-25, 27, 29, 30 and this Section 30 will survive the expiration or earlier termination of the Contract, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination.